

Tangible personal property that is required to be titled or registered with an agency of this State or the federal government and are reported on individual transaction reporting returns is subject to the allowance of advance trade-ins if all of the requirements set out at 86 Ill. Adm. Code 130.455(d) are followed. See 86 Ill. Adm. Code 130.455. (This is a GIL).

July 23, 2001

Dear Xxxxx:

This letter is in response to your letter dated May 21, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

This is a request for a General Information Letter. We are seeking clarification of the application of 86 Ill Admin. Code, Sec. 130.455 to the purchase and trade-in of aircraft. We have not found any previous letter rulings from the Department that either extend the application of the regulation to aircraft or specifically rule that the regulation is limited only to motor vehicles and if so specifically what type of vehicles. Your assistance in this matter is greatly appreciated.

Our client (purchaser) is planning to dispose of two Falcon aircraft and purchase two Lear aircraft. For the purposes of this Letter the Falcons will be referred to as F1 and F2 the Lears will be referred to as L1 and L2. The transactions will be structured as like kind exchanges for Federal Income Tax purposes and will use an aircraft retailer as the selling entity and qualified intermediary. The seller will sell, at retail, both L1 & L2 to purchaser and will accept F1 & F2 from purchaser as trade-ins of like kind and character property.

In May of 2001 purchaser will trade-in F1 with a fair market value of \$18.5 Million. There will be \$7.425 Million in boot. Seller will hold \$3.1 million of the boot in escrow pending delivery of L2 and will receive \$4.325 Million in cash.

On September 15, 2001 purchaser will take delivery of L1 for a purchase price of \$11.075 Million and acquire a 33% interest in L2. On November 5, 2001 purchaser will acquire the remaining interest in L2 and will take delivery of L2. The purchase price of L2 is \$10.9 Million and the fair market value of the trade-in, F2, is \$7.8 Million. Purchaser will trade-in F2 on November 15, 2001 and will apply \$3.1 Million of the boot from the F1/L1 transaction to the purchase price of L2.

In total the purchase price of L1 & L2 is \$21.975 Million. The trade in value of F1 & F2 is \$26.3 Million. Purchaser will receive \$4.325 Million in cash when the transaction is complete.

At the time of the purchase of L1 and trade-in of F1 it is contemplated that L2 will be able to be specifically identified and a contract to purchase L2 will be entered into by the parties. However, it is possible that the parties may not at that time be able to specifically identify L2 or finalize the purchase of L2. If that is the case, the parties will enter into an agreement that contractually obligates purchaser to purchase an aircraft from the seller within 9 months of the purchase of L1 and trade-in of F1. The purchase of both aircraft will be documented by a sales contract that will identify each aircraft sold and traded by type, model and serial number. The dates of delivery of the purchased aircraft and the traded aircraft will be specified but may be amended with the agreement of the parties.

Rulings Requested

1. The trade-in of F1 in the purchase of L1 constitutes a valid trade-in under the terms of 86 Ill. Admin. Code, Sec.130.425.
2. The above-described transactions qualify as advanced trade-ins under the terms of 86 Ill. Admin. Code, Sec.130.455. Notwithstanding that this regulation references motor vehicles, we believe that the regulation should apply equally to any titled or registered property that is sold by a dealer and registered in the State of Illinois. There is no apparent reason that the regulation should not apply to aircraft and watercraft as well as motor vehicles. All of these items are titled or registered property and all sales of these items are required to be individually reported on transaction reporting returns. We submit that the restriction of the applicability of the regulation solely to motor vehicles would be a violation of uniformity and denial of equal protection.

Purchaser will be contractually obligated to purchase an aircraft from seller within 9 months after the date of the advance trade-in transaction. A portion of the boot of \$7.425 Million from the F1/L1 transaction will be held by seller in escrow pending the completion of the L2 purchase. \$3.1 Million of the \$7.425 Million will be designated as trade-in credit. The remaining \$4.325 Million will be returned as cash to purchaser.

3. Additionally, the above-described transactions may qualify as valid multiple trade-ins and the timing of the delivery of the respective aircraft will not affect the taxability of the transaction as long as all aircraft are identified in the purchase documents. If all of the aircraft can be specifically identified and a contract to purchase L2, as a specifically identified aircraft, is entered into at the time of the F1/L1 transaction the fact that L2 will be delivered later than L1 and F2 may be surrendered later than F1 does not affect the fact that all of the aircraft were exchanged in a transaction that qualifies as a multiple trade-in. The transaction is a single transaction involving multiple sales and trades with separate delivery dates.
4. If for some reason the F2/L2 transaction is not consummated or is delayed for more than 9 months, the tax consequence will simply be that the boot from the

F1/LI transaction will no longer be available to purchaser as a trade-in credit in future transactions. The \$11.075 Million trade-in value of FI that was applied to the purchase of L1 will not be lost.

Please call me if you have any questions.

DEPARTMENT'S RESPONSE:

Section 130.455(d) of the Department's administrative rules regarding advance trade-ins provides:

"d) Advance Trade-Ins

A transaction may constitute an advance trade-in if, at the time the vehicle is traded to the dealer, the purchaser becomes contractually obligated to purchase one or more vehicles from the dealer within 9 months after the date of the advance trade-in transaction. Advance trade credits not used within the time specified expire and may not be used subsequent to the 9 month credit period. Advance trade credits are non-transferable.

- 1) In order to apply the trade-in credit toward the purchase price of a vehicle, the documents recording the purchaser's contractual obligation to purchase need not specify the make, model or purchase price of a vehicle to be purchased, only that the purchaser is under an obligation to purchase within the specified amount of time.
- 2) Advance trade-in credit given by the dealer to the purchaser in the amount of the *value of or credit given* for a traded-in vehicle at the time of the advance trade-in may be in the form of dealer credit or cash, and will not affect the purchaser's ability to apply the advance trade credit toward the purchase of one or more vehicles, so long as the purchaser is contractually obligated to purchase a vehicle from the dealer within the time specified. In completing the transaction, the purchaser may pay the dealer cash or other consideration for the purchase price of a vehicle or vehicles purchased. (Section 1 of the Act)
- 3) Documentation evidencing an advance trade-in transaction must include the following: The contract establishing the *value of or credit given* for a traded-in vehicle, the obligation to purchase a vehicle, and the date of expiration of the advance trade-in credit; the bill of sale for the traded-in vehicle; and the appropriate sales or use tax return evidencing the purchase of the new or used vehicle and recording the application of the advance trade-in credit. Advance trade-in transactions may not be structured so that the purchaser is not the owner of the automobile offered for trade. (Section 1 of the Act)"

The reason that the Department's rules allow for advance trade-ins of vehicles is because vehicles are normally titled and registered and the sales of such items are reported on individual transaction reporting returns which can be more readily traced and accounted for than other types of tangible personal property. Other types of tangible personal property that are required to be titled or registered with an agency of this State or the federal government and are reported on individual transaction reporting returns would likewise also be subject to the allowance of advance trade-ins if all of the requirements set out at 86 Ill. Adm. Code 130.455(d) are followed.

The transactions described in your letter also involve multiple trade-ins and multiple sales.¹ Section 130.455(f) of the Department's administrative rules provides

“f) Multiple and Split Trade-in Transactions

1) Multiple Trade-In Transactions

A purchaser may utilize a trade-in credit when trading in more than one vehicle to a dealer on the purchase of a single new or used vehicle. The dealer may use the cumulative trade-in credits from the traded-in vehicles to reduce gross receipts from the sale of the newly purchased vehicle so long as the trade-ins and sale are recorded as a single transaction.

2) Split Trade-In Transactions

A purchaser may utilize a trade-in credit when trading in a single vehicle to a dealer on the purchase of more than one new vehicle. The dealer may split the amount of the trade-in credit from the traded-in vehicle, and apply it toward the purchase price of one or more new vehicles so long as the trade-in and purchases are recorded as a single transaction. The amount of trade-in credit to be applied to each new vehicle will be determined by the dealer and purchaser.

3) Combined Transactions

A multiple trade-in transaction or split trade-in transaction may only be used in conjunction with an advance trade-in transaction if the transfer of all vehicles involved in the trade are recorded as a single transaction and the purchaser is contractually obligated to purchase a vehicle from the dealer within the specified period of time.” 86 Ill. Adm. Code 130.455(f).

The scenario described in your letter would also be subject to the provisions in subsection (f)(3) of Section 130.455. If the trade-ins of the two Falcon aircraft and the purchase of the two Lear aircraft are recorded as a single transaction on the books and records of the aircraft retailer and all of the other requirements of Section 130.455 are met, the transaction described in your letter would generally qualify as an advance trade-in situation.²

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

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¹ The letter states that the client is to receive a 33% interest in Lear number 2 at some point in the transaction with the remaining interest acquired upon delivery. We understand that that no third party is involved in this transaction and the remaining interest is held by the manufacturer pending completion of the manufacture and delivery of the aircraft.

² All provisions of 86 Ill. Adm. Code 130.425 regarding traded-in property, including clear documentation of the transfers of title, must be complied with for the transactions to be considered valid trade-in transactions.